

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1073 of 2018

Arising Out of PS. Case No.-507 Year-2014 Thana- GAYA MUFASIL District- Gaya

1. Sanju Paswan, S/o Dhrub Paswan, R/o Vill.- Parashi, P.S.- Noorsarai (Bhagan Bigha O.P.), District- Nalanda, at present R/o Vill.+ P.S.- Chandi, District- Nalanda.
2. Ashok Rajak, S/o Sohan Rajak, R/o Mohalla- Rajak Tola Selti, P.S.- Silli, District- Ranchi.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rina Sinha

For the Respondent/s : Mr. Rajendra Nath Jha

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 25-01-2019

Heard parties.

This Criminal Revision petition has been filed for setting aside the judgment and order dated 29.06.2018 passed by the learned Additional Sessions Judge, IV, Gaya in Criminal Appeal No.11 of 2016/01 of 2016 by which learned Appellate Court has dismissed the appeal and affirmed the judgment and order dated 29.01.2016 passed by the learned Chief Judicial Magistrate, Gaya convicting both the petitioners under Section 394/34 of the Indian Penal Code(G.R. 5491 of 2014, Tr. No.372 of 2016 arising out of Moffasil P.S. Case No.507 of 2014 and sentenced both the petitioners to undergo rigorous imprisonment for seven years each and a fine of Rs.5,000/- (five thousand)



each and in default of payment, they were further directed to undergo simple imprisonment for fifty days.

Prosecution story is that the informant Arvind Kumar Verma is driver of Tata Hywa and on 13.11.2014 while he was returning after unloading the road materials along with his cleaner at about 9:30 P.M. and when they reached near Harli Railway crossing, a white coloured Bolero came from front side in which four miscreants were sitting variously armed and snatched away Vodafone Mobile, driving license and Hywa truck and made them hostage in their Bolero vehicle and after driving some distance threw them out from the Bolero vehicle and fled away with Tata Hywa. Thereafter, the informant and his cleaner somehow untied themselves and informed to the owner about the incident and they went to the Moffasil Police Station along with owner and lodged the FIR. They claimed to identified the miscreants upon which Moffasil P.S. Case No. 507 of 2014 was registered against unknown persons.

The case was investigated by the Investigating Officer and case finding to be true against the petitioners, charge-sheets was submitted under Section 394/34 and 411/34 of I.P.C. and charges were framed under Section 394, 411 read with 34 of the Indian Penal Code on 29.07.2015 and the



petitioners pleaded not guilty and claimed to be tried.

The prosecution has examined altogether six witnesses in support of the charge and on conclusion of trial, learned Chief Judicial Magistrate, Gaya, found the charges to be proved beyond reasonable doubt and convicted both the petitioners under Sections 394/34 of the IPC and sentenced to undergo rigorous imprisonment of seven years and also imposed a fine of Rs.5,000/- each, however charges under Section 411 have been found to be not proved.

PW 6, Arvind Kumar Verma, is the informant, who has deposed that occurrence took place on 13.11.2014 while he was returning with the vehicle with his cleaner, Karu Manjhi, and near Harli Railway Crossing four miscreants on bolero vehicle came from front and overpowered them and pushed them down from the Hywa and made them hostage in their Belero vehicle and after some distance threw them out from the Bolero vehicle and fled away with Tata Hywa with his driving license and mobile. Thereafter, the informant and his cleaner somehow untied themselves and informed the owner of the truck about the incident and effort was made to locate the Hywa truck but the same could not be traced and thereafter FIR was instituted. PW 6 has proved his signature on Fard-e-byan which



has been marked as Ext.8. The looted Hywa truck was seized by the Ranchi Police and both the accused were arrested by the Ranchi Police. He went to Ranchi to bring the looted vehicle. He also proved his signature on the seizure list which has been marked as Ext.9.

PW 3, is Sub-Inspector, Niwas Kumar, who is the Investigating Officer of the case and has proved the formal FIR and has stated that he took the charge of investigation and recorded Fardebeyan on 14.11.2018 at 6:00 A.M. of informant and other witnesses and went to the place of occurrence and when he returned he came to know that looted Hywa has been recovered and two accused have been arrested at Ranchi Khelgaon Chauk at Sadar Police Station, Ranchi. Thereafter he proceeded to Ranchi and found the Hywa recovered to be the looted Hywa and took the Hywa and two accused in his custody and also seized the mobile of the accused from his possession.

PW 4, is the cleaner, Karu Manjhi, who has also identified the accused in the Court. PW 1, Rajiv Ranjan is the Munsif of truck. PW 2, Jitu Singh was at Ranchi when the looted Hywa truck was intercepted by the police and he was called who has also identified the accused and proved the signature on seizure list as Exts.1 and 1/1.



PW 5, Anwar Hussain, is the owner of the vehicle, and on the basis of evidence led on behalf of the prosecution, the trial court found the charge under section 394 read with 34 of the IPC to be established beyond reasonable doubt. However, charges under Section 411 of the IPC was not held to be proved and convicted both the accused. The appeal preferred by the petitioners being criminal appeal No.11 of 2016/01 of 2016 was dismissed by the Appellate Court after re-appreciation of entire evidence. Thereafter the petitioners have preferred this criminal revision before this Court.

After going through the judgment and order of conviction and sentence passed by the trial Court as well as the judgment and order dismissing the appeal passed by the Appellate Court, this Court does not find any illegality or infirmity in the orders passed by the trial Court as well as Appellate Court.

It has been submitted on behalf of the petitioners that it is their first offence and they are in custody since 16.11.2014 and as such they have been sufficiently punished and their sentence may be reduced to the period already undergone.

Considering the aforementioned facts and



circumstances of the case, the revision application is partly allowed and the order dated 29.06.2018 passed by the learned Additional Sessions Judge, IV, Gaya in Criminal Appeal No.11 of 2016/01 of 2016 and order dated 29.01.2016 passed by the learned Chief Judicial Magistrate, Gaya is affirmed but the sentence of the petitioners is reduced to the period already undergone by the petitioners.

Since the petitioners are in jail custody, they are directed to be set at liberty forthwith if not required in any other case.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.01.2019
Transmission Date	30.01.2019

